

## **REMARKS/ARGUMENTS**

The Examiner has rejected claims 1 and 3 under 35 U.S.C. §102(b) as being anticipated by Marik et al. (U.S. 5,417,694). The undersigned attorney for the Applicant would like to express his sincere appreciation to Examiner Priddy for the courtesies extended during a telephone interview on February 17, 2004. At that time, the undersigned proposed amending claim 1 as set forth above. It is respectfully submitted that, with this amendment, claim 1 is new and unobvious to a person skilled in the art and having knowledge of Marik et al. or any other references of record whether taken alone or in combination with one another.

With the amendment, claim 1 clearly sets forth the features that the slot is positioned to guide the saw to cut in a medial to lateral direction or in a lateral to medial direction and that it does so without disrupting the intramedullary channel of the femur. The reference to Marik et al. not only requires the use of an intramedullary rod but also is specifically directed to positioning and rigidly affixing the distal femoral cutting block 35 to the anterior aspect of the patient's distal femur (see column 11, lines 22-27). After the distal femoral cutting block has been secured to the anterior aspect of the patient's distal femur, the surgeon then removes the intramedullary rod 19, valgus block 10 and stylus 20. After removal of these elements, the surgeon can now use a flat surgical cutting saw 48 (see Fig. 25) to cut bone tissue from the patient's distal femur.

The surgeon can then remove the cutting block 35 and place the anterior cutting block 51 and paddle body 52 of the guide or gauge 50 the anterior cutting block 51 has a transversely extending cutting guide slot 57 that guides a flat cutting saw 48 during shaping of the patient's anterior cortex (see column 11, lines 50-62 and Figs. 20-24). As can be clearly seen from Fig. 22 and from the description, the paddles or feet 58, 59 are resting upon the posterior condyles 65 while the saw 48 is shaping the patient's anterior cortex. (See also Figs. 23 and 24).

It is respectfully submitted that there would be no ability for the Marik et al. instrumentation to guide a saw to cut in a medial to lateral direction or lateral to medial direction as set forth in claim 1 as amended.

The other references of record also fail to suggest or disclose the features of a guide member with a slot positioned to guide a saw to cut in a medial to lateral direction or lateral to medial direction with an arm assembly which has a surface engageable with a distal end of a condyle to be cut and a stylus which extends into the plane along which a saw will travel when moved through said slot to limit the extent to which the saw can travel.

The reference Matsuno et al. (U.S. 6,090,114) is directed to a tibial plateau resection guide. This resection guide has no ability to direct cutting from a medial to lateral direction or lateral to medial direction or any element resembling a stylus to limit the extent to which a saw extending the slot can travel.

The reference to Wehrli (U.S. 4,938,762) is directed to a reference system for implantation of condyle total knee system. It discloses instrumentation which can be attached externally to the tibia for performing osteotomies on the tibia and the femur; however, as may be seen clearly from the figures and the description, it would have no ability to perform the osteotomy in a medial to lateral direction or lateral to medial direction. There also is no means such as the stylus to limit the extent to which a saw extending through the slot can travel.

The reference to Ferrante et al. (U.S. 5,364,401) is directed to an external alignment system for preparing an implant. It is clear that the instrumentation disclosed therein could not be used to cut in a medial to lateral direction or lateral to medial direction and providing a stop to limit the extent to which the saw may travel.


In view of the foregoing, it is respectfully submitted that claims 1 and 3 are patentable over the art of record. Reconsideration and allowance of such claims are respectfully solicited.

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The allowance of claims 12-18 and 20-47 is noted with appreciation. Claims 2 and 4-10 were indicated to be allowable if rewritten in independent form to incorporate the limitations of the base claim and any intervening claims. This has been done and it is believed that those claims are also now allowable.

In view of the foregoing, allowance of claims 1-10, 12-18 and 20-47 are respectfully solicited.

Respectfully submitted,  
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